

Judiciary Committee

HB 1881

Title: *An act relating to information provided by former or current employers to prospective employers.*

Brief Description: *Limiting liability for information provided by former or current employers to prospective employers.*

Sponsors: *Representatives Carrell, Woods, Benson, Reardon, Morris, Pennington, Anderson, O'Brien, Cairnes, DeBolt, Pflug and Hunt.*

Brief Summary of Bill

- *Provides immunity from civil liability for certain information provided by former or current employers to prospective employers.*

Hearing Date: *2/22/01*

Staff: *Katy Freeman (786-7386).*

Background:

In the employment reference context, defamation occurs when an employer makes a false or potentially disparaging remark about a present or a former employee when giving an employment reference. In order to defend a defamation claim, an employer may assert that the content of what he or she said was true or the employer may claim a qualified privilege.

An employer is protected by a common-law qualified privilege when providing job reference information to other employers. The qualified privilege allows an employer to disclose potentially defamatory information about an employee if the employer reasonably believes that the information is true after a fair and impartial investigation or upon reasonable grounds for the belief.

This privilege does not apply when the employer discloses the information with malice. Malice means acting in bad faith and with knowledge of falsity of statements. Once an

employer establishes a qualified privilege, the burden shifts to the employee to prove by a preponderance of the evidence that the employer acted maliciously.

Additionally, under common law, an employer has no duty to disclose negative information about a former employee to a prospective employer, irrespective of any harm that results to that employer or others.

Washington statutes do not directly address the issue of employer job reference liability.

Summary of Bill:

An employer who discloses job performance, conduct, or other work related information about a former or current employee to a prospective employer or employment agency at their request is presumed to be acting in good faith and is immune from civil liability for the disclosure and its consequences.

A former or current employee may rebut the presumption of good faith by clear and convincing evidence that the employer provided knowingly false or deliberately misleading information.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.